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GROUP 1700
PATENT
Examiner No. 22,852
Attorney Docket No. 07738.0158

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Lawrence B. ZIESEL) Group Art Unit: 1724
)
Application No.: 10/015,584) Examiner: Charles S. BUSHEY
)
Filed: December 17, 2001)
)
For: CARBONATOR WITH TARGETED)
CARBONATION LEVEL)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

In a restriction requirement dated May 7, 2003, the Examiner required restriction under 35 U.S.C. § 121 between:

- Group I: Claims 1-12 (allegedly drawn to a gas-liquid mixer);
- Group II: Claims 13-24 and 31 (allegedly drawn to a carbonator); and
- Group III: Claims 25-30 (allegedly drawn to a process).

The Examiner asserts that Groups I and II are unrelated and acknowledges that a showing that (1) they are not disclosed as capable of use together and (2) they have different modes of operation, different functions, or different effects is necessary in order to require restriction between these groups. Instead of providing the required showing, the Examiner merely alleges that "Group I requires carbon dioxide be supplied to a

headspace, which is not required by the invention of Group II," and that "Group II provides a beverage dispenser, which is not part of the invention of Group I."

Applicant respectfully disagrees with the restriction requirement applied to Groups I and II because these groups are not independent. Further, the Examiner fails to set forth any of the above requirements of unrelated (i.e., independent) inventions. Specifically, the Examiner has not provided a showing that Groups I and II have different modes of operation, different functions, or different effects. To the contrary, Groups I and II are both generally directed to carbonating devices, and the claims of both groups include a tank, a baffle positioned in the tank to target a desired carbonation level of water in the tank, and an orifice in a first end of the tank. Thus, both Groups have related modes of operation, functions, and effects. Moreover, both of Groups I and II are directed toward the embodiment described in the specification with respect to FIGS. 1-4. Therefore, Groups I and II can hardly be described as "unrelated."

Furthermore, the M.P.E.P. provides guidance on the subject of unrelated inventions. Particularly, the M.P.E.P. states that an application containing independent (i.e., unrelated) inventions "is but rarely presented, since persons seldom file an application containing disclosures of independent things." M.P.E.P. § 808.01. In fact, the M.P.E.P. provides an example of independent inventions: "[a]n article of apparel such as a shoe, and a locomotive bearing." M.P.E.P. § 806.04(A). Indeed, Groups I and II are not independent inventions. Therefore, the restriction requirement between Groups I and II should be withdrawn.

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In view of the foregoing, Applicant respectfully requests that the Examiner withdraw the restriction requirement between Groups I and II and examine all of the claims of Groups I and II (claims 1-24 and 31) together.

If the Examiner refuses to withdraw the restriction requirement as requested, Applicant provisionally elects, **with traverse**, to prosecute Group I, claims 1-12, allegedly drawn to a gas-liquid mixer, and Applicant respectfully requests that the Examiner designate the entire restriction requirement as being final so that Applicant will be able to file a petition seeking review of the requirement.

Applicant respectfully disagrees with a number of statements in the Office Action relating to the invention, the claims, and/or the related art. For example, Applicant respectfully disagrees with Examiner's assertion that "Group I requires carbon dioxide be supplied to a headspace." Also, the Examiner mistakenly alleges that "Group II provides a beverage dispenser." Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action, regardless of whether it is addressed specifically herein.


Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: June 9, 2003

By: _____


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